

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL
RECEIVED

APR 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Forfeiture Policy and Rules)
To Incorporate Forfeiture)
Guidelines)

CI Docket No. 95-6

DOCKET FILE COPY ORIGINAL

**REPLY COMMENTS OF MCI
TELECOMMUNICATIONS CORPORATION**

MCI Telecommunications Corporation (MCI) hereby
responds to comments filed in the captioned docket.

MCI urges the Federal Communications Commission
(Commission or FCC) to issue a further notice of proposed
rulemaking in this proceeding. It is clear from the court's
remand, and the comments filed herein, that the FCC should
reexamine the forfeitures policy. MCI agrees with the
National Association of Broadcasters (NAB) that the
Commission should take a fresh look at developing a more
reasonable approach to achieving compliance with the rules
and the Act.

I. Forfeitures Should Not Be Imposed on the Basis of
Service Classification

In the proposed fine schedule, the base fine amounts
are four times higher for violations committed by common
carriers than for those committed by broadcasters or cable
television operators, and ten times higher than for
violations committed by "other" service providers. The FCC

No. of Copies rec'd
List ABCDE

C74

has not articulated a justification for this disparate treatment of service providers. The Commission has not shown that a rule violation committed by common carriers is more harmful to the public than the same violation committed by other entities.

MCI agrees with Bell Atlantic and United States Telephone Association (USTA) that the Commission should establish base fines for violations without classifying violators by the services they provide. The type of carrier is not a meaningful basis for distinction in the structure of fines to be imposed for violations that are often common among classes of service.

The Commission should propose guidelines that generally subject all service providers to the same liability for the same violations. USTA states that the Commission would achieve administrative efficiency by adopting a single base forfeiture for all violations and applying the adjustment criteria to that single amount. This approach would be consistent with the way the Commission imposes fines for failure to light and mark towers. MCI supports this approach.

II. Base Amounts Should Be Reduced from Those Initially Proposed

MCI agrees with commenters (Emery Telephone Co., Harrisonville Telephone Co., Mobile Phone of Texas) that under the proposed schedule, fines imposed on common

carriers can reach staggering proportions after only a few days. This result is unnecessary as a means to deter violations. It is especially unfair for violations that are unintentional.

The proposed policy would impose on common carriers fines starting from a base fine that is 40-80% of the statutory maximum. Clearly some justification is required to show that such measures are needed to effect compliance with the Act and rules, especially in view of historical fines in the range of 0.05 percent to 5 percent of the statutory maximum. It is unfair to establish fines at the 40-80% maximum before consideration of intentional, aggravated or egregious circumstances.

MCI agrees that base amounts should be lowered from those proposed in the NPRM for nearly all violations. NAB urges a reduction of 50 percent in the base amount levels for all fines that do not involve threats to safety of life or property (e.g., tower lighting), blatant evasion of the regulatory process (operating without a license), or potential for serious interference with other communications operations. This appears to be a reasonable reduction of the fine schedule.

NAB also proposes that the Commission cease issuing fines for first violations of lesser offenses, such as those not involving safety or blatant evasion of the regulatory process. It suggests instead that the Commission staff

should issue a warning and an explanation of how the violator can achieve compliance. Failure of the warned violator to comply within a reasonable period would result in a base fine. Subsequent or repeated occurrences of the same violation would result in an increase over the base level. MCI supports these suggestions.

As MCI noted in its comments, rule violations are often inadvertent. MCI agrees with PageNet that when applying the adjustment factors to the base amounts, the Commission should increase the base fine only in cases of intentional violations. Inadvertent violations should be fined at or below the base amounts.

III. Conclusion

As discussed above, MCI believes that forfeitures should not be based on classification of service providers. MCI argues that the base fines generally should be reduced from the levels proposed by the Commission. MCI requests

that the Commission revise the proposal in accordance with comments received and issue a further notice of proposed rulemaking.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By:

A handwritten signature in dark ink, appearing to read "Loretta J. Garcia", is written over a horizontal line.

Loretta J. Garcia

Donald J. Elardo

1801 Pennsylvania Avenue, N.W.

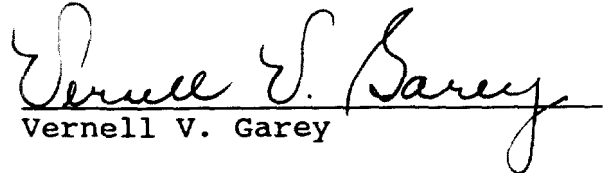
Washington, D.C. 20006

(202) 887-2802

Dated: April 17, 1995

CERTIFICATE OF SERVICE

I, Vernell V. Garey, do hereby certify that on this 17th day of April, 1995, copies of the foregoing "**REPLY COMMENTS**" in CC Docket No. 95-6 were served by first-class U.S. mail, postage prepaid, upon the parties listed on the attached list.


Vernell V. Garey

***HAND-DELIVERED**

Kathleen Wallman, Chief*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Gene P. Belardi
MobileMedia Communications, Inc.
2101 Wilson Boulevard, Suite 935
Arlington, VA 22201

Beverly Baker, Chief*
Compliance and Information Bureau
Federal Communications Commission
1919 M Street, N.W., Room 734
Washington, D.C. 20554

Alan R. Shark, President
American Mobile Telecommunications
Association, Inc.
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036

International Transcription Service*
1919 M Street, N.W.
Washington, D.C. 20554

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez,
Chartered
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036

Mark J. Golden
Vice President - Industry Affairs
Personal Communications Industry
Association
1019 Nineteenth Street, N.W.
Suite 1100
Washington, D.C. 20036

Susan H.R. Jones
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

Edward Shakin
Bell Atlantic Telephone Companies
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Judith St. Ledger-Roty
Paul G. Madison
Reed Smith Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

**Harold Mordkofsky
Richard D. Rubino
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W.
Washington, D.C. 20037**

**Linda Kent
Mary McDermott
Charles D. Cosson
United States Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005**

**Steven A. Lerman
Dennis P. Corbett
Renee L. Roland
Levethal, Senter & Lerman
Suite 600
2000 K Street, N.W.
Washington, D.C. 20006**

**Harry L. Baumann
Executive Vice President and
General Counsel
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036**

**Christopher D. Imlay
Booth Freret & Imlay
1233 20th Street, N.W., Suite 204
Washington, D.C. 20036**

**Kathleen A. Kaercher
Brown and Schwaninger
1835 K Street, N.W., Suite 650
Washington, D.C. 20006**

**Harold Mordkofsky
Richard D. Rubino
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W.
Washington, D.C. 20037
Attorneys for Harrisonville
Telephone Company**